

## **SDSMT SENIOR DESIGN SOFTWARE DEVELOPMENT AGREEMENT**

This Software Development Agreement (the "Agreement") is made between the SENIOR DESIGN TEAM eLation Nation ("Student Group"), consisting of team members Michael Malkowski, Rachel Pekarek, and Jeremy Warner and Innovative Systems, LLC ("Sponsor"), having a place of business at Rapid City, South Dakota.

### **RECITALS**

1. Sponsor desires Senior Design Team to develop software for use with Sponsor's eBill and eLation systems (the "Field").
2. Senior Design Team is willing to develop such Software.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, the Team and Sponsor agree as follows:

### **1. EFFECTIVE DATE**

This Agreement shall be effective as of October 1<sup>st</sup>, 2012 (the "Effective Date").

### **2. DEFINITIONS**

1. "Software" shall mean the mobile applications and web service in machine readable object code form, its respective source code and dependent resources, and any subsequent error corrections or updates supplied to Sponsor by Senior Design Team pursuant to this Agreement.
2. "Acceptance Criteria" means the written technical and operational performance and functional criteria and documentation standards set out in the project plan.
3. "Acceptance Date" means the date for each Milestone when all Deliverables included in that Milestone have been accepted by Sponsor in accordance with the Acceptance Criteria and this Agreement.
4. "Deliverable" means a deliverable specified in the project plan.
5. "Delivery Date" shall mean, with respect to a particular Milestone, the date on

which University has delivered to Sponsor all of the Deliverables for that Milestone in accordance with the project plan and this Agreement.

6. "Documentation" means the documents, manuals and written materials (including end- user manuals) referenced, indicated or described in the project plan or otherwise developed pursuant to this Agreement.

7. "Milestone" means the completion and delivery of all of the Deliverables or other events which are included or described in the project plan scheduled for delivery and/or completion on a given target date; a Milestone will not be considered completed until the Acceptance Date has occurred with respect to all of the Deliverables for that Milestone.

### **3. DEVELOPMENT OF SOFTWARE**

1. Senior Design Team will use its best efforts to develop the Software described in the project plan. The Software development will be under the direction of Jeremy Warner or his successors as mutually agreed to by the parties ("Team Lead") and will be conducted by the Team Lead. The Team will deliver the Software to the satisfaction of the course instructor that reasonable effort has been made to address the needs of the client. The Team understands that failure to deliver the Software is grounds for failing the course.

2. Sponsor understands that the Senior Design course's mission is education and advancement of knowledge, and, consequently, the development of Software must further that mission. The Senior Design Course does not guarantee specific results or any results, and the Software will be developed only on a best efforts basis. The Software is considered PROOF OF CONCEPT only and is NOT intended for commercial, medical, mission critical or industrial applications.

3. The Senior Design instructor will act as intermediary between Sponsor and Team; and resolve any conflicts that may arise.

### **4. COMPENSATION**

Each member of the Student Group will receive \$15 per hour and hold an internship position under the Sponsor.

## **5. CONSULTATION AND REPORTS**

1. Sponsor's designated representative for consultation and communications with the Team Lead shall be Brian Butterfield or such other person as Sponsor may from time to time designate to the Team Lead ("Designated Representative").
2. During the Term of the Agreement, Sponsor's representatives may consult informally with course instructor regarding the project, both personally and by telephone. Access to work carried on in University facilities, if any, in the course of this Agreement shall be entirely under the control of University personnel but shall be made available on a reasonable basis.
3. The Team Lead will submit written progress reports. At the conclusion of this Agreement, the Team Lead shall submit a comprehensive final report in the form of the formal course documentation at the conclusion of the Senior Design II course.

## **6. CONFIDENTIAL INFORMATION**

1. The parties may wish, from time to time, in connection with work contemplated under this Agreement, to disclose confidential information to each other ("Confidential Information"). Each party will use reasonable efforts to prevent the disclosure of any of the other party's Confidential Information to third parties for a period of three (3) years after the termination of this Agreement, provided that the recipient party's obligation shall not apply to information that:
  1. is not disclosed in writing or reduced to writing and so marked with an appropriate confidentiality legend within thirty (30) days of disclosure;
  2. is already in the recipient party's possession at the time of disclosure thereof;
  3. is or later becomes part of the public domain through no fault of the recipient party;
  4. is received from a third party having no obligations of confidentiality to the disclosing party;
  5. is independently developed by the recipient party; or
  6. is required by law or regulation to be disclosed.
2. In the event that information is required to be disclosed pursuant to subsection (6), the party required to make disclosure shall notify the other to allow that party to assert whatever exclusions or exemptions may be available to it under such law or

regulation.

## **7. INTELLECTUAL PROPERTY RIGHTS**

1. All deliverables become the property of the Sponsor.
2. All source code will be encrypted and password protected while stored on all computer systems except the Sponsors systems.
3. All source code will be removed from all computers, except the Sponsors, within 30 days of the termination of the contract.

## **8. WARRANTIES**

The Senior Design Team represents and warrants to Sponsor that:

1. the Software is the original work of the Senior Design Team in each and all aspects;
2. the Software and its use do not infringe any copyright or trade secret rights of any third party.

No agreements will be made beyond items (1) and (2).

## **9. INDEMNITY**

1. Sponsor is responsible for claims and damages, losses or expenses held against the Sponsor.
2. Sponsor shall indemnify and hold harmless the Senior Design Team, its affiliated companies and the officers, agents, directors and employees of the same from any and all claims and damages, losses or expenses, including attorney's fees, caused by any negligent act of Sponsor or any of Sponsor's agents, employees, subcontractors, or suppliers.
3. NEITHER PARTY TO THIS AGREEMENT NOR THEIR AFFILIATED COMPANIES, NOR THE OFFICERS, AGENTS, STUDENTS AND EMPLOYEES OF ANY OF THE FOREGOING, SHALL BE LIABLE TO ANY OTHER PARTY HERETO IN ANY ACTION OR CLAIM FOR

CONSEQUENTIAL OR SPECIAL DAMAGES, LOSS OF PROFITS, LOSS OF OPPORTUNITY, LOSS OF PRODUCT OR LOSS OF USE, WHETHER THE ACTION IN WHICH RECOVERY OF DAMAGES IS SOUGHT IS BASED ON CONTRACT TORT (INCLUDING SOLE, CONCURRENT OR OTHER NEGLIGENCE AND STRICT LIABILITY), STATUTE OR OTHERWISE. TO THE EXTENT PERMITTED BY LAW, ANY STATUTORY REMEDIES WHICH ARE INCONSISTENT WITH THE PROVISIONS OF THESE TERMS ARE WAIVED.

## **10. INDEPENDENT CONTRACTOR**

For the purposes of this Agreement and all services to be provided hereunder, the parties shall be, and shall be deemed to be, independent contractors and not agents or employees of the other party. Neither party shall have authority to make any statements, representations or commitments of any kind, or to take any action which shall be binding on the other party, except as may be expressly provided for herein or authorized in writing.

## **11. TERM AND TERMINATION**

1. This Agreement shall commence on the Effective Date and extend until the end of classes of the second semester of Senior Design (CSC 467), unless sooner terminated in accordance with the provisions of this Section ("Term").
2. This Agreement may be terminated by the written agreement of both parties.
3. In the event that either party shall be in default of its materials obligations under this Agreement and shall fail to remedy such default within thirty (30) days after receipt of written notice thereof, this Agreement shall terminate upon expiration of the thirty (30) day period.
4. Any provisions of this Agreement which by their nature extend beyond termination shall survive such termination.

## **12. ATTACHMENTS**

Attachment A is incorporated and made a part of this Agreement for all purposes.

## **13. GENERAL**

1. This Agreement constitutes the entire and only agreement between the parties relating to the Senior Design Course, and all prior negotiations, representations, agreements and understandings are superseded hereby. No agreements altering or supplementing the terms hereof may be made except by means of a written document signed by the duly authorized representatives of the parties.

2. This Agreement shall be governed by, construed, and enforced in accordance with the internal laws of the State of South Dakota.

**University Representatives**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**Sponsor**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**Student Group**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_